

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ROBERT TROY McCLURE §
v. § CIVIL ACTION NO. 5:11cv180
BRAD LIVINGSTON, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

The Plaintiff Robert McClure, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

McClure has filed a motion for certification of the lawsuit as a class action. On October 17, 2011, the Magistrate Judge issued a Report recommending that the motion for certification of the case as a class action be denied. McClure filed objections to the Report on November 2, 2011.

The Court has conducted a careful *de novo* review of the pleadings in this case, including the Plaintiff's motion for class certification, the Magistrate Judge's Report, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. The Court would further note that the Plaintiff Robert McClure has accumulated three strikes within the meaning of 28 U.S.C. §1915(g), as of September 29, 2011, and thus necessarily cannot serve as an adequate class representative as

required by Rule 23(a)(4), Fed. R. Civ. P.¹ Cf. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) (*pro se* prisoners are not adequate representatives fairly able to represent the class); Wright, Miller & Kane, Federal Practice and Procedure, §1769.1 at 450 and n.13 (3rd ed. 2005) (stating as a rule that “class representatives cannot proceed *pro se*”). It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff’s motion for class certification, filed September 30, 2011 (docket no. 3) is hereby DENIED.

SIGNED this 8th day of November, 2011.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

¹See McClure v. Holder, et al., civil action no. 5:08cv804 (W.D.Tex., dismissed as frivolous December 5, 2008, appeal dismissed September 8, 2009); McClure v. Baggett, civil action no. 5:10cv79 (E.D.Tex., dismissed as frivolous May 24, 2010, no appeal taken); McClure v. Morales, civil action no. 5:09cv164 (W.D.Tex., dismissed February 11, 2011, appeal dismissed as frivolous September 29, 2011).